

REMARKS

Claims 9-11, 16-20, 25-31, 40-44, and 51-53 are pending. Claims 12-15, 21-24, 32-39, and 45-50 are canceled.

1. Claims 9-11, 16-17, 27-31, 40-44, 51, and 53 were rejected under 35 U.S.C. 101. Present independent claims 9 and 53 have been amended to positively recite an interface device on which interfaces are displayed and through which input is accepted. As such, claims 9 and 53 and claims that depend therefrom are tied to another statutory class, such as a particular apparatus, and therefore meet the requirements of 35 U.S.C. 101.

2. Claims 9-11, 16-20, 25-31, 40-44, and 51-53 were rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis et al. (US 2001/0041992, hereinafter “Lewis”) and further in view of Yoder et al. (“The MEDIGATE Graphical User Interface for Entry of Physical Findings: Design Principles and Implementation,” hereinafter “Yoder”). Applicants respectfully traverse this rejection.

The proposed combination fails to teach each and every element. In particular, Lewis and Yoder fail to teach or suggest a tri-state control to indicate one of three states. Lewis is silent regarding such controls, and Yoder discloses use of two bi-state check-boxes, which under the proposed interpretation would yield a control having at least four states, not three.

Claim 9 is directed to a method for documenting medical findings of a physical examination. The method includes displaying on an interface device a first interface including a first graphical representation of anatomical features, accepting from the user via the interface device a first selection of an anatomical feature based on the first graphical representation of anatomical features, displaying on the interface device a second interface including a second graphical representation of anatomical features and a first set of controls relating to a first plurality of medical conditions in response to accepting the first selection, accepting from the user via the interface device a second selection from the second graphical representation of anatomical features, and displaying on the interface device a third interface including a second set of controls relating to a second plurality of medical conditions. The first set of controls

includes a tri-state control configured to indicate one of three states including present, not present, or not entered. The method further includes accepting from the user an indication of not present, the indication resulting from the user selecting the tri-state control twice, and storing data associated with the indication with the first selection. Claim 18 is directed to a device that includes instructions for performing a method similar to that recited in claim 9.

Claim 53 is directed to a method for documenting medical findings of a physical examination. The method includes displaying on an interface device a first interface including a first graphical representation of anatomical features, accepting from the user via the interface device a first selection of an anatomical feature based on the first graphical representation of anatomical features, displaying on the interface device a second interface including a second graphical representation of anatomical features and a first set of controls relating to a first plurality of medical conditions in response to accepting the first selection, accepting from the user via the interface device an indication of not present, the indication resulting from the user selecting a tri-state control twice, combining the first selection and the indication to derive at least one medical finding, accepting from the user via the interface device a second selection from the second graphical representation of anatomical features, and displaying on the interface a third interface including a second set of controls relating to a second plurality of medical conditions.

Turning to the cited references, Lewis is directed to an anatomical user interface for accessing healthcare information for a patient. The anatomical user interface generates an anatomical model of the patient from which the practitioner drills down to and selects an anatomical structure for which the healthcare information is to be accessed. (Lewis, Abstract).

As stated previously, the filing date of Lewis postdates the priority date of the present application. The priority document of Lewis, which is lacking much of the disclosure of Lewis, fails to teach or suggest many elements recited in the claims. The PTO states that it is relying on the priority date from the parent application 09/523,569 and states that based on review of the parent application it is believed that the portions of the child application cited are fully supported by the parent application. However, the PTO relies upon FIGs. 4H, 4I, and 4J, and paragraphs 0110-0111, which are not found in the parent application. While the PTO asserts in the Advisory

Action of January 28, 2008 that the parent application and in particular, FIG. 4D of the parent application provides support for the relied upon teachings, FIG. 4D and its associated text are inadequate for the reasons outlined below. It is noted that the PTO did not rely on FIG. 4D of Lewis, which is the same as FIG. 4D of the priority document, in rejecting the independent claims. The PTO is reminded that the key to supporting any rejection under 35 U.S.C. 103 is clear articulation of the reasons why the claimed invention would have been obvious. The Supreme Court in KSR noted that analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. MPEP 2141, 2142, and 2143. Applicants respectfully submit that, if the PTO is relying on the disclosure of the parent application, clear articulation of the reasons would be best accomplished by explicit citations to the parent application.

The PTO asserts in the Advisory Action that FIG. 4D of the parent application to Lewis shows a partially obstructed view and thus, the anatomical feature is not obstructed. Merriam Webster's Collegiate Dictionary Tenth Edition (see attached sheets) defines obstruct as "to hinder from passage, action, or operation: impede." Clearly, the anatomical feature in FIG. 4D is hindered from action until the window identified as 412 in FIG. 4D is removed. Accordingly, the disclosure relied upon by the PTO has an effective priority of March 12, 2001, after the November 22, 2000 priority of the present application.

Nevertheless, the PTO has further cited Yoder. Yoder is directed to a computer enhanced interactive graphic and textual record of the findings from physical examinations. (Yoder, Abstract). Yoder states that the starting physical exam window contains a table of contents to which the user has immediate access. Some of the body regions have an "N" in the box to the immediate left. This designates what the physician routinely checks for and defaults to "N" for "Normal." (Yoder, pg. 330, last paragraph). Yoder provides an example in which, after examination of the abdomen, the physician selects the abdominal region from the examination status window. "This will open to the abdominal frame (see FIG. 2) which defaults to what the physician routinely checks for and finds as 'normal' findings. This physician routinely checks for scars, tenderness, point pain, masses, and guarding. If none of these are present, then they are designated normal (i.e., the 'N' in the box directly left to the finding). If the patient has 'Normal' findings within the abdomen, the physician simply clicks on the box to the left of the 'N,' generating an 'X' to designate by an intentional affirmation that this patient has had all of

these findings checked and they were normal.” (Yoder, pg. 331, last paragraph - pg. 332, first paragraph). Neither Lewis nor Yoder disclose a tri-state control. In fact, in the sections of Yoder cited in the present Office Action, each of the controls are bi-state check-boxes, i.e., only having two states. Furthermore, Lewis and Yoder fail to teach or suggest selecting such a tri-state control twice in order to indicate the absence of a condition proactively.

As stated in the Office Action (p.6), the Examiner interprets Yoder’s teachings of allowing the physician to utilize the letter “N” to designate “Normal” and “P” to denote problem areas and “X” to designate a positive affirmation that all findings were checked to teach a form of a “tri-state control.” In fact, the combination of two of the disclosed two-state check-boxes yields an element as interpreted by the Examiner with at least four states: {_,N}; {_,P}; {X,N}; and {X,P}. Such a control is not a tri-state control having three states. Instead, it is two bi-state check-boxes that in combination provide four states. The Examiner has not explained how such a configuration of check-boxes could be interpreted as a tri-state control. Given the absence of a tri-state control, the references clearly fail to teach or suggest selecting such a control twice.

In contrast, each of the independent claims 9, 18, and 53 recite a tri-state control to indicate one of three states. At best, Lewis and Yoder disclose bi-state controls and at no point teach or suggest selecting a tri-state control.

For at least the foregoing reasons, claims 9-11, 16-20, 25-31, 40-44 and 51-53 are patentable over Lewis in view of Yoder. As such, Applicants respectfully request reconsideration and withdrawal of the 35 U.S.C. 103(a) rejection.

Applicants respectfully submit that the present application is now in condition for allowance. Accordingly, the Examiner is requested to issue a Notice of Allowance for all pending claims.

Should the Examiner deem that any further action by the Applicants would be desirable for placing this application in even better condition for issue, the Examiner is requested to telephone Applicants’ undersigned representative at the number listed below.

The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 50-3797.

February 16, 2010

Date

Respectfully submitted,

/John R. Schell/

John R. Schell, Reg. No. 50,776
Agent for Applicant(s)
LARSON NEWMAN & ABEL, LLP
5914 West Courtyard Drive, Suite 200
Austin, TX 78730
(512) 439-7100 (phone)
(512) 439-7199 (fax)